

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Coleson Smith	Team: Squad #13	CCRB Case #: 202204599	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/13/2022 7:20 PM	Location of Incident: 687 East 138th Street	18 Mo. SOL 1/13/2024	Precinct: 40		
Date/Time CV Reported Thu, 07/14/2022 6:50 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 07/14/2022 6:55 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO John Eller	30780	965069	040 PCT
2. PO Eduard Lucero	12992	960838	040 PCT
3. PO Stephen Oswald	01696	961985	040 PCT
4. PO Felix Pichardo	16188	957956	040 PCT
5. LT Michael Bowman	00000	939932	040 PCT
6. PO Yoeldy Espinal	02470	963505	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . PO John Eller	Abuse: Police Officer John Eller stopped the vehicle in which § 87(2)(b) was an occupant.	
B . LT Michael Bowman	Abuse: Lieutenant Michael Bowman stopped the vehicle in which § 87(2)(b) was an occupant.	
C . PO John Eller	Abuse: Police Officer John Eller threatened to arrest § 87(2)(b)	
D . PO Eduard Lucero	Abuse: Police Officer Eduard Lucero made a sexually suggestive remark to § 87(2)(b)	
E . LT Michael Bowman	Off. Language: Lieutenant Michael Bowman made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
F . LT Michael Bowman	Discourtesy: Lieutenant Michael Bowman spoke discourteously to § 87(2)(b)	
G . PO John Eller	Discourtesy: Police Officer John Eller spoke discourteously to § 87(2)(b)	
H . PO John Eller	Abuse: Police Officer John Eller threatened to issue summons to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On July 14, 2022, § 87(2)(b) filed this complaint with the CCRB on behalf of himself.

On July 13, 2022, at approximately 7:20 P.M., in the vicinity of 687 East 138th Street, in the Bronx, Police Officer John Eller and Lieutenant Michael Bowman stopped the vehicle in which § 87(2)(b) was an occupant (**Allegation A and B: Abuse of Authority:** § 87(2)(g) PO Eller threatened to arrest § 87(2)(b) (**Allegation C: Abuse of Authority:** § 87(2)(g) Police Officer Eduard Lucero made a sexually suggestive remark to § 87(2)(b) (**Allegation D: Abuse of Authority:** § 87(2)(g) Lieutenant Michael Bowman made offensive remarks to § 87(2)(b) (**Allegation E: Offensive Language:** § 87(2)(g) and spoke discourteously to him (**Allegation F: Discourtesy:** § 87(2)(g) PO Eller then spoke discourteously to § 87(2)(b) (**Allegation G: Discourtesy:** § 87(2)(g) and threatened to issue him a summons (**Allegation H: Abuse of Authority:** § 87(2)(g), § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Body worn camera (BWC) footage was obtained from PO Eller, PO Lucero, Lt. Bowman, and Police Officers Stephen Oswald, Felix Pichardo, and Yoeldy Espinal, all of the 40th Precinct (**01-06 Board Review**).

No arrests or summonses resulted from the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer John Eller stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Lieutenant Michael Bowman stopped the vehicle in which § 87(2)(b) was an occupant.

The following facts are undisputed. On July 13, 2022, at approximately 7 p.m., § 87(2)(b) was driving a White 2020 Kia Forte sedan when he was stopped by six uniformed police officers from the 40th Precinct in front of 687 East 138th Street, in the Bronx. The officers, who were in two unmarked vehicles, activated their emergency lights and sirens, prior to stopping § 87(2)(b) vehicle, and ultimately pulled up in front of and behind § 87(2)(b) vehicle, respectively. The officers approached § 87(2)(b) vehicle's driver's and front passenger's sides, respectively. PO Eller, who was on the driver's side, ordered § 87(2)(b) to provide his license and registration, which § 87(2)(b) provided. PO Eller informed § 87(2)(b) that he was stopped because his license plate was obstructed, returned § 87(2)(b) ID and registration, and said § 87(2)(b) was free to leave. § 87(2)(b) did not receive a summons as a result of this incident.

§ 87(2)(b) stated that the vehicle was registered in his name, that there was a male occupant, whom he only described as a relative, in the front passenger's seat, and did not recall whether his vehicle's license plates were obstructed (**07 Board Review**). He, however, provided a photograph of his rear license plate, which showed a black plastic frame bordering the plate, and partially obscuring the words "Empire State" along the bottom (11 Board Review).

Lt. Bowman's BWC at 01:00, captures a black license plate frame bordering around § 87(2)(b) rear license plate (**01 Board Review**). The vehicle's license plate number is visible, but the top and bottom portions of the plate are not clearly visible.

PO Eller and Lt. Bowman provided consistent testimonies. PO Eller stated that he, Lt. Bowman, and PO Oswald were patrolling the incident location in an unmarked Dodge Caravan when PO Eller, who was the driver of the police vehicle, saw § 87(2)(b) vehicle with a license plate frame partially obscuring the license plate (08 Board Review). PO Eller activated his vehicle's emergency lights and proceeded to stop § 87(2)(b) vehicle for the license plate frame. PO Eller did not recall any discussion with Lt. Bowman prior to the vehicle stop, did not recall who made the decision to stop § 87(2)(b) vehicle, and said he and Lt. Bowman had no other reasons for stopping § 87(2)(b) vehicle. Lt. Bowman on the other hand said it was PO Eller who drew his attention to the license plate frame on § 87(2)(b) vehicle, and that the decision to stop § 87(2)(b) vehicle was made by PO Eller (09 Board Review). PO Eller and Lt. Bowman both acknowledged that PO Lucero, PO Pichardo, and PO Espinal, who were in another unmarked vehicle behind PO Eller and Lt. Bowman, also assisted with the stop of § 87(2)(b) vehicle, and that PO Eller ultimately utilized his discretion not to issue § 87(2)(b) a summons, but rather elected to warn and admonish § 87(2)(b) about the license plate frame. PO Eller elected not to issue § 87(2)(b) a summons because the audit of § 87(2)(b) information did not "yield anything significant."

New York State Vehicle and Traffic Law Section 402(b)(i) states that license plates "shall be kept clean and in a condition so as to be easily readable and shall not be covered by glass or any plastic material and shall not be knowingly covered with any artificial or synthetic material that obscures any part of the number plates" (12 Board Review).

The BWC and the photograph § 87(2)(b) provided all establish that the black plastic frame § 87(2)(b) had around his rear license plate partially obscured portions of the vehicle's license plate. § 87(2)(b) § 87(2)(b) (g)

Allegation (C) Abuse of Authority: Police Officer John Eller threatened to arrest § 87(2)(b).

Allegation (D) Abuse of Authority: Police Officer Eduard Lucero made a sexually suggestive remark to § 87(2)(b).

Allegation (E) Offensive Language: Lieutenant Michael Bowman made remarks to § 87(2)(b) based upon the gender of § 87(2)(b).

Allegation (F) Discourtesy: Lieutenant Michael Bowman spoke discourteously to § 87(2)(b).

Allegation (G) Discourtesy: Police Officer John Eller spoke discourteously to § 87(2)(b).

Allegation (H) Abuse of Authority: Police Officer John Eller threatened to issue summons to § 87(2)(b).

§ 87(2)(b) stated that he told the officers that they had no reason to stop him after PO Eller returned his ID and registration (07 Board Review). PO Eller accused § 87(2)(b) of giving the officers an attitude, and said to § 87(2)(b) "Do you want to go down to the 40th Precinct right now?" § 87(2)(b) understood PO Eller's statement as a threat to arrest him but did not know why PO Eller wanted to arrest him. § 87(2)(b) began to argue with the officers, at which point PO Lucero, identified via investigation (19 Board Review), said to § 87(2)(b) "Suck my dick." Lt. Bowman, identified via investigation (19 Board Review), also called § 87(2)(b) a "pussy." The officers then returned to the respective vehicles and left the scene. § 87(2)(b) did not allege that any of the officers threatened to issue him a summons, nor did he allege that PO Eller spoke discourteously to him.

The six BWCs are all consistent with each other. PO Lucero's BWC at 01:18, shows PO Lucero, PO Eller, and PO Oswald, all standing by the driver's side of § 87(2)(b) vehicle, while PO Pichardo, PO Espinal, and Lt Bowman are by the vehicle's front passenger's side (**02 Board Review**). At 01:16 and 02:39, § 87(2)(b) hands PO Eller his driver's license and vehicle's registration, respectively. PO Eller says to § 87(2)(b) "How's your driver's license," to which § 87(2)(b) replies, "run it and find out." PO Eller asks § 87(2)(b) why he "giving [PO Eller] an attitude." § 87(2)(b) replies that he is not giving anyone an attitude. At 03:00, PO Lucero, PO Eller, PO Oswald, and PO Espinal make slight hand gestures to each other and appear to speak, but whatever is said is not audible, except that PO Eller appears to return § 87(2)(b) ID and registration. At 03:10, PO Lucero begins to walk towards the unmarked vehicle parked a few feet in front of § 87(2)(b) vehicle. PO Eller is heard in the background telling § 87(2)(b) that he was stopped because of the frame around his rear license plate. At 03:14, § 87(2)(b) who is not depicted, but identified via investigation, appears to say, "Yeah, whatever fuck--[inaudible]." PO Lucero turns and begins to walk towards § 87(2)(b) driver's door. PO Eller and PO Espinal, who are at this point no longer near the § 87(2)(b) driver's side, and appear to be walking away from the vehicle, also return to the driver's side, and PO Eller says to § 87(2)(b) "What was that?" PO Lucero then ends his recording.

PO Espinal's BWC at 03:14, shows PO Eller, PO Espinal, PO Lucero, and PO Pichardo, all returning to § 87(2)(b) driver's side (**03 Board Review**). § 87(2)(b) tells the officers that there are no covers on his license plates. At 03:21, PO Espinal slightly turns away and ends his recording. (The BWCs of PO Eller [**04 Board Review**] and PO Pichardo [**06 Board Review**] at 03:13, and 03:08, respectively, also show the two officers ending their recordings just about the same time § 87(2)(b) informs the officers that he does not have license plate covers.)

Lt. Bowman's BWC at 03:10 shows him and PO Oswald walking towards their unmarked vehicle, which is parked behind § 87(2)(b) vehicle (**01 Board Review**). At 03:17, PO Eller is heard in the background saying, "What was that?" at which point PO Oswald and Lt. Bowman turn and face § 87(2)(b) vehicle. Lt. Bowman and PO Oswald remain by their vehicle's front passenger and driver's sides, respectively, and observe as PO Eller, PO Espinal, PO Lucero, and PO Pichardo, all return to § 87(2)(b) driver's side. PO Eller and § 87(2)(b) appear to speak about the license plate frame. At 03:29, PO Eller says to § 87(2)(b) "You're not allowed to have anything covering any part of your license plate.... I don't give a fuck who Yonkers Kia is [...] Do you want a traffic violation?" At 03:36, Lt. Bowman ends his recording. (PO Oswald's BWC [**05 Board Review**] also shows him ending his recording about the same time Lt. Bowman ends his recording).

PO Eller said he returned to § 87(2)(b) driver side because § 87(2)(b) appeared to say something to the officers while they walked away, but did not recall what § 87(2)(b) said, except that § 87(2)(b) appeared to be confrontational (**08 Board Review**). PO Eller acknowledged saying something to § 87(2)(b) when he approached, but did not recall what he said, except that he denied making any threats to arrest § 87(2)(b) nor did he or any of the other officers use any profane or offensive remarks to § 87(2)(b) PO Eller, however, after reviewing Lt. Bowman's BWC acknowledged saying to § 87(2)(b) "I don't give a fuck who Yonkers' Kia is," and "Do you want a traffic violation." PO Eller did not know why he used such language towards § 87(2)(b) and said his statement about whether § 87(2)(b) wanted a traffic violation was not a threat in any way, but rather an attempt to inform § 87(2)(b) that the officers were utilizing their discretion not to issue him a summons for the obstructed license plate.

Lt. Bowman and PO Lucero did not recall having any conversation with § 87(2)(b) (**09-10 Board Review**). They both did not recall hearing any officer direct any profane or offensive remarks towards § 87(2)(b) nor did they at any point tell § 87(2)(b) to "suck my dick," or call him a "pussy." PO

Lucero and Lt. Bowman also did not hear PO Eller or any other officer threaten to arrest § 87(2)(b) but Lt. Bowman said § 87(2)(b) could have been arrested or summonsed for the obstructed license plate.

NYPD Patrol Guide 200-02 states that officers are to “maintain a higher standard of integrity than is generally expected of others,” “respect the dignity of each individual,” and “render services with courtesy and civility” (13 Board Review).

The BWC footage establishes that PO Eller, PO Lucero, PO Pichardo, and PO Espinal, all returned to § 87(2)(b) driver’s side after § 87(2)(b) appeared to say something to the officers as they initially walked away. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g) Lt. Bowman’s BWC captured one instance where PO Eller said to § 87(2)(b) “I don’t give a fuck who Yonkers Kia is.” PO Eller did not know why he used such profanity towards § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

Lt. Bowman’s BWC shows PO Eller asking § 87(2)(b) if he “wanted a traffic violation,” which PO Eller acknowledged was seemingly a warning to § 87(2)(b) about whether he wanted a summons for the obstructed license plates. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation (O) Other Possible Misconduct Noted:

§ 87(2)(b)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**14 Board Review**).
- PO Eller has been a member of service for four years and has been a subject in one other CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Lt. Bowman has been a member of service for 16 years and has been a subject in 14 CCRB complaints and 36 allegations, of which four were substantiated. § 87(2)(g)
 - 201808753 involved substantiated allegations of damaged property and seized property. The Board recommended Command Discipline and the NYPD imposed the recommended discipline.
 - 202000753 involved two substantiated allegations of failure to provide RTKA card. The Board Recommended Command Discipline and the NYPD took no disciplinary action.
 - § 87(2)(g)
 - 202105058 involves allegations of physical force and property damage and is still under investigation.
 - 202204915 involves an allegation of force and is still under investigation.
- PO Lucero has been a member of service for six years and has been a subject in 10 other complaints and 16 allegations, one of which was substantiated
 - 201806550 involved a single substantiated allegation of discourtesy. The Board recommendation and The NYPD penalty is unavailable.
 - 202200051 involves a frisk allegation and a search of a person allegation and is still under investigation.
 - 202204915 involves an allegation of physical force and is still under investigation.

Mediation, Civil, and Criminal Histories

- On August 4, 2022, this case was sent to mediation and on August 16, 2022, the case was returned to investigation as the complaint was no longer suitable for mediation.
- As of September 27, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**18 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 1

Investigator: Coleson Smith Inv. Coleson Smith 11/22/2022
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____